

United States
Circuit Court of Appeals

For the Ninth Circuit.

ASTORIA IRON WORKS, a Corporation, Intervenor,
Appellant,

vs.

INLAND NAVIGATION COMPANY, a Corporation,
Claimant of the Gas Boat "BAINBRIDGE," Her
Tackle, etc.,

Appellee.

Apostles.

Upon Appeal from the United States District Court for the
Western District of Washington, Northern Division.

FILED

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No. 2196

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 4429.

T. J. KING and A. WINGE, Doing Business as
KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

INLAND NAVIGATION COMPANY, a Corpo-
ration,

Claimant.

Names and Addresses of Counsel.

C. C. DALTON, Esq., Proctor for Intervenor and
Appellant.

432 Pioneer Bldg., Seattle, Washington.

HERBERT W. MEYERS, Esq., Proctor for Inter-
venor and Appellant.

432 Pioneer Bldg., Seattle, Washington.

IRA BRONSON, Esq., Proctor for Claimant and
Appellee. [1*]

*Page-number appearing at foot of page of original certified Record.

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No. 4429.

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vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

INLAND NAVIGATION COMPANY, a Corpo-
ration,

Claimant.

Statement.

TIME OF COMMENCEMENT OF SUIT.

December 29, 1910.

NAMES OF PARTIES TO SUIT.

Intervening Libelant: Astoria Iron Works, a cor-
poration.

Respondent: Gas boat "Bainbridge," etc., and
Inland Navigation Company, a corporation, claim-
ant.

DATES OF FILING RESPECTIVE PLEADINGS.

Intervening Libel, filed December 29, 1910.

Appearance of gasoline launch "Bainbridge" and
Inland Navigation Company, a corporation, claim-
ant, filed November 23, 1910.

Answer of the Inland Navigation Company, claimant, to the Intervening Libel of the Astoria Iron Works, filed April 1, 1911.

ISSUANCE OF PROCESS AND SERVICE
THEREOF.

On December 29, 1910, issued Monition and Attachment against gas boat "Bainbridge," etc., and delivered the same to marshal for service. On the 31st day of December, 1910, marshal returned [2] the same into the clerk's office with return indorsed thereon showing seizure of the gas boat "Bainbridge," etc., and of the release thereof pursuant to Section 941, U. S. R. S.

REFERENCE TO COMMISSIONER.

Cause was referred to Commissioner A. C. Bowman to take and report the testimony, and on July 10, 1911, and February 13, 1912, said Commissioner duly returned into the clerk's office his transcript of the testimony so taken, together with the exhibit offered in evidence before said Commissioner, which said testimony and exhibit were duly filed in said cause on the 4th day of April, 1911.

TIME OF TRIAL.

This cause was submitted to the Honorable C. H. Hanford, Judge of the District Court, on testimony taken before a Commissioner and was by him taken under advisement and a Memorandum Decision on the Merits was handed down and filed June 13, 1912.

DATE OF ENTRY OF DECREE.

A Memorandum Decision on the Merits was filed in the District Court on June 13, 1912, and the De-

cree of Dismissal was made and entered and filed in said District Court on July 1, 1912, and Notice of Appeal was served August 14, 1912, and filed in the District Court October 24, 1912.

C. C. DALTON,
HERBERT W. MEYERS,
Proctors for Appellant. [3]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 4429.

T. J. KING and A. WINGE, Doing Business as
KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE,"

Respondent.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

Intervening Libel.

The intervening libel of the Astoria Iron Works, a corporation, against the gas boat "Bainbridge," her tackle, apparel and furniture, and against all persons lawfully intervening for their interests, in a cause of contract civil and maritime, and the said intervening libelant alleges and propounds as follows:

I.

That the said vessel is now in the port of Seattle,

in the District aforesaid, and is in the custody of the Marshal of the United States for the Western District of Washington, Northern Division, and is held upon process issued out of this Honorable Court at the suit of T. J. King and A. Winge, doing business as King & Winge, vs. the gas boat "Bainbridge," number 4429, which said action is still pending.

II.

That the intervening libelants are now and were at all times herein mentioned a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business being in Astoria, Oregon, and said intervening libelants have complied with all the requirements [4] of law, and are entitled to do business in the State of Washington.

III.

That during the years 1909 and 1910, the Astoria Iron Works, intervening libelant herein, performed labor and furnished material at the request of and under contract with the owners, master and agents of the gas boat "Bainbridge," a domestic vessel, registered with the United States Custom Office, located at Port Townsend, Washington, for which said services and material there is a balance due of \$3,020.30, no part of which has been paid, although demand therefor has been made. This work was done and the material furnished in the State of Washington, and was for the alteration, repair and equipment of said gas boat. Said work was done on board said vessel while she was lying in her home

port. The material furnished and the work done was done within less than three years, and those performing and furnishing the same relied on the assurances of the owners and their agents, and at the time they believed that they could hold the said gas boat "Bainbridge" for said work and material.

Wherefore, the libelant prays that they may be permitted to intervene according to the course and practice of the courts of Admiralty and Maritime Jurisdiction, against the said gas boat "Bainbridge," her tackle, apparel and furniture, and prosecute same jointly with the said T. J. King and A. Winge, doing business as King & Winge, and that all persons having or pretending to have any right, title or interest, may be cited to appear and answer all and singular the matters hereinbefore set forth, and that this Honorable Court will be [5] pleased to decree the payment of the amount aforesaid, and also to condemn and sell the said vessel, her tackle, apparel and furniture, to pay the same, with costs and for such other relief as may be proper in the premises.

ASTORIA IRON WORKS.

By JOHN FOX,

President.

C. C. DALTON,

HERBERT W. MEYERS,

Proctors for Intervening Libelant.

State of Oregon,

County of Clatsop,—ss.

On this 12th day of December, 1910, before me personally came the within named John Fox, Pres-

ident of the Astoria Iron Works, and made oath that he had read the foregoing intervening libel, and knows the contents thereof, and that the same is true as to his own knowledge, except as to those matters and things stated to be on his information and belief, and as to those matters and things he believes them to be true.

JOHN FOX.

Subscribed and sworn to before me this 12th day of December, 1910.

[Seal] G. C. FULTON,
Notary Public in and for the State of Oregon, Residing at Astoria, in Clatsop County.

My commission expires Dec. 27, 1910.

[Indorsed]: Intervening Libel. Filed in the U. S. District Court, Western Dist. of Washington. Dec. 29, 1910. R. M. Hopkins, Clerk. [6]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4429.

T. J. KING and A. WINGE, Doing Business as
KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE,"

Respondent.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

INLAND NAVIGATION COMPANY, a Corporation,
ration,

Claimant.

Answer.

Comes now the claimant, Inland Navigation Company, and in answer to the libel in intervention of the Astoria Iron Works, alleges as follows:

I.

Referring to paragraph two thereof, this claimant denies that it has any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations therein contained, and therefore denies the same.

II.

Referring to paragraph three thereof, this claimant denies each and every allegation, matter and thing therein contained; and particularly denies that there is a balance due of \$3,020.20, or any other sum of money whatsoever.

Wherefore, this claimant having fully answered the libel in intervention of said Astoria Iron Works respectfully prays that it may be hence dismissed and have and recover its costs and disbursements herein.

IRA BRONSON,

Proctor for Claimant. [7]

United States of America,
State of Washington,
County of King,—ss.

C. H. J. Stoltenberg, being first duly sworn, on oath deposes and says: That he is the Secretary of the Inland Navigation Company, a corporation, claimant herein; that he has read the foregoing Answer, knows the contents thereof and believes the same to be true.

C. H. J. STOLTENBERG.

Subscribed and sworn to before me this 17th day of January, 1911.

[Seal]

ROBERT W. REID.

Notary Public in and for the State of Washington,
Residing at Seattle.

Due service of a copy hereof admitted this 18th day of January, 1911.

HERBERT W. MEYERS,
C. C. DALTON,

Attorneys for Astoria Iron Works.

[Indorsed]: Answer to Libel in Intervention of Astoria Iron Works. Filed in the U. S. District Court, Western Dist. of Washington, Apr. 1, 1911.
R. M. Hopkins, Clerk. [8]

[Findings and Conclusion of U. S. Commissioner.]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 4429.

T. J. KING and A. WINGE, Copartners, Doing
Business as KING & WINGE,
Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,
Respondent.

INLAND NAVIGATION COMPANY, a Corpo-
ration,

Claimant.

ASTORIA IRON WORKS, a Corporation,
Intervenor.

To the Honorable Judges of the Above-entitled
Court:

Having taken the proofs offered by the several
parties to the above-entitled cause and after consid-
ering the same, I submit the following:

FINDINGS OF FACT.

I.

That at all times herein mentioned the respond-
ent, the gas boat "Bainbridge" was an American
vessel, plying on the waters of Puget Sound and
within the jurisdiction of this Honorable Court.

II.

That the libelants T. J. King and A. Winge are

copartners, doing business under the firm name of King & Winge.

III.

That the libelants, between the 25th day of September, 1908, and the 23d day of February, 1910, at the special instance and request of the owners and agents of the respondent gas boat "Bainbridge," furnished labor and material in and about the repair of said gas boat, of the reasonable value of \$1,011.35. [9]

That upon said account there has been paid by the owners of said respondent the sum of \$811. That there is now due and owing to said libelant on account of said labor and material from the said respondent and owners the sum of \$200.35.

IV.

That it was agreed between the libelants and the owners of the said respondent "Bainbridge" that the said labor and material should be furnished and performed upon the faith and credit of said respondent "Bainbridge."

V.

That the intervenor the Astoria Iron Works is a corporation organized and existing under the laws of the State of Oregon and authorized to do business in this State.

VI.

That said intervenor, at the special instance and request of the owners of the said "Bainbridge," furnished certain gas engines and fixtures which were installed in the said gas boat "Bainbridge," of the reasonable value of \$3,550, and also furnished

extra material and labor amounting to \$189, making a total sum of \$3,739, no part of which sum has been paid except the sum of \$1,000, leaving a balance due and owing of \$2,739.

VII.

That no agreement was made between the intervening libelant and the owners of said respondent that said engines, fixtures and labor should be performed on the faith and credit of the said "Bainbridge."

CONCLUSION OF LAW.

I.

That the libelants King & Winge are entitled to a lien against the respondent "Bainbridge" in the sum of \$200.35, together with their [10] costs and disbursements.

Respectfully submitted,

[Seal]

A. C. BOWMAN,

U. S. Commissioner.

[Indorsed]: Findings of Fact by U. S. Commissioner. Filed in the U. S. District Court, Western Dist. of Washington. Feb. 13, 1912. A. W. Engle, Clerk. By S., Deputy. [11]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 4429.

T. J. KING and A. WINGE, Doing Business as
KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE,"

Respondent.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

**Order [Permitting Astoria Iron Works to
Intervene, etc.].**

This matter coming on for hearing this — day
of December, 1910, and the Court being duly ad-
vised in the premises, it is;

Ordered, adjudged and decreed that the Astoria
Iron Works, a corporation, has permission to inter-
vene in the cause wherein King & Winge are libel-
ants, and the gas boat "Bainbridge" is respondent,
and the intervenor, the Astoria Iron Works, has
permission to file its intervening libel.

C. H. HANFORD,

Judge.

[Indorsed]: Order. Filed in the U. S. District
Court, Western Dist. of Washington. Dec. 29, 1910.
R. M. Hopkins, Clerk. [12]

[Order Referring Matter Back to U. S. Commissioner for Taking of Further Testimony in Behalf of Libelant.]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4429.

T. J. KING and A. WINGE, Partners, Doing Business as KING & WING,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

ORDER OF REFERENCE.

Now on this 2d day of October, 1911, this matter coming on to be heard upon the application of the proctor for the libelants for an order referring the above-entitled matter back to the United States Commissioner for the taking of further testimony on behalf of libelants, and the Court having read the Stipulation herein on file between the proctors for the parties herein providing for same;

It is hereby ordered that the above-entitled matter be and it is referred back to the United States Commissioner, A. C. Bowman, for the taking of further testimony in behalf of libelants.

C. H. HANFORD,

Judge.

[Indorsed]: Order of Reference. Filed in the U. S. District Court, Western Dist. of Washington,

Oct. 2, 1911. A. W. Engle, Clerk. By F. A. Simpkins, Deputy. [13]

*United States District Court, Western District of
Washington, Northern Division.*

No. 4429.

T. J. KING and A. WINGE, Copartners, Doing
Business as KING & WINGE,
Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

INLAND NAVIGATION COMPANY, a Cor-
poration,

Claimant.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

**Memorandum Decision on the Claim of the Astoria
Iron Works.**

Filed _____.

The Astoria Iron Works, a corporation, has intervened in this case and by pleadings and evidence endeavored to establish a lien against the "Bainbridge" for a new engine and fixtures and extra labor and materials furnished in making repairs and improvements to said vessel, at her home port. The amount of the claim has been established, but the evidence fails to prove that there was any agreement or understanding or consent on the part of the owner of the boat required to subject the vessel to

a lien under the rule established by the decision of the Circuit Court of Appeals for this Circuit in the case of *Alaska & P. S. S. Co. v. C. W. Chamberlain*, 116 Fed. Rep. 600. Therefore, the claim being older than the national lien statute of 1910, the Court is constrained to disallow the claim.

C. H. HANFORD,

United States District Judge.

[Indorsed]: Memorandum Decision on the Claim of the Astoria Iron Works. Filed in the U. S. District Court, Western Dist. of Washington, June 13, 1912. A. W. Engle, Clerk. By S., Deputy.
[14]

*United States District Court, Western District of
Washington, Northern Division.*

No. 4429.

T. J. KING and A. WINGE, Copartners, Doing
Business as KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

INLAND NAVIGATION COMPANY, a Cor-
poration,

Claimant.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

Decree of Dismissal.

This cause coming on to be heard on this —

day of June, 1912, upon the motion of the claimant, The Inland Navigation Company, a corporation, for the entry of a decree dismissing the intervening libel of the intervenor, Astoria Iron Works, a corporation, and it appearing that this cause was heard upon the pleadings and proofs, and after argument of counsel for the respective parties, the Court entered its memorandum decision finding that the evidence failed to prove that there was any agreement or understanding or consent on the part of the owner of the "Bainbridge" required to subject said vessel to a lien, and disallowing the claim of said intervenor.

It is now ordered, adjudged and decreed by the Court that the intervening libel of the Astoria Iron Works, a corporation, intervenor, be, and the same is hereby dismissed.

It is further ordered and decreed that the claimant, The Inland Navigation Company, a corporation, recover from said intervenor, Astoria Iron Works, a corporation, its costs herein to be taxed.

Done in open court this 1st day of July, 1912.

C. H. HANFORD,

Judge. [15]

Due service of a copy hereof admitted this 20th day of June, 1912.

HERBERT W. MEYERS.

C. C. DALTON.

[Indorsed]: Order of Dismissal. Filed in the U. S. District Court, Western Dist. of Washington, July 1, 1912. A. W. Engle, Clerk. By S., Deputy.

[16]

No. 4429.

KING & WINGE, Libelants, and ZUGEHOER,
et al., Intervenors,

vs.

The Gas Boat "BAINBRIDGE," etc., Respondent.

Testimony Reported by Commissioner. [17]

*In the District Court of the United States for the
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Division.*

No. 4429.

T. J. KING and A. WINGE, Doing Business as
KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

Libelants' Testimony.

To the Honorable Judge of the Above-entitled Court:

Pursuant to the order of reference in this case, on this 30th day of December, 1910, the libelants appeared in person and by Mr. Daniel Landon, their proctor, and the claimant appeared by Mr. Ira Bronson, its proctor, before me, and the following proceedings were had and testimony offered:

[Testimony of A. Winge, for Libelants.]

A. WINGE, one of the libelants, being duly sworn, testified on behalf of the libelants as follows:

Q. (Mr. LANDON.) You are one of the firm of King and Winge the libelants in this case?

(Testimony of A. Winge.)

A. Yes, sir.

Q. State what you did, if anything, on the "Bainbridge."

A. We hauled her out in our yard, and side tracked her in the winter of 1908. And after she had been staying there some time, I don't know how long, he decided to put a new engine in the boat. She had two engines in her and he wanted to put just one engine in her, and strengthen up the boat with keelsons in the skag and bore a hole—in fact he wanted us to do all the work and fix the guards, etc., and the house, and several [18] things you know, around the boat, which we did. And, towards spring I went after him for some money, and he paid us some, and we thought they would have a good run and would pay us right along. Well, I told him then, I says, "Of course, we need the money," and, "Well," he says, "you will get it; you need not be afraid about the money; the boat is good for the work," so we let it go at that. And we hauled her up several times, I don't know how many after that, for minor repairs, such as painting. One time he broke his wheel and had to haul her out. And he paid us most of it, except there is a balance of \$235 that he has not paid, and that is what we would like to get.

Q. You speak about the party in charge; who was he?

A. I don't know his first name. His name was Munk. He used to be with the Sailors' Institute. He was the managing owner of the boat. His partner was also there. He was working on it. I do not

(Testimony of A. Winge.)

remember his name.

Q. Just generally, if you remember, what, if anything, was said at the time you made the repairs on the boat?

A. Well, it was mentioned, as I said, that he would pay as soon as they could make the—they had a good run they would pay pretty quickly, and he said that we need not worry about the money, the boat is good for it.

Q. What was the amount?

A. The amount at that time I do not exactly remember, but the whole amount was about \$1,011.75, I think. That is the amount that was on all the times we hauled her out.

Q. What are you suing for?

A. We are suing for the balance we have not got.

[19]

Q. How much is that? A. That is \$200.35.

Q. Where was the boat at the time the repairs were made?

A. In our yard, sidetracked over on the flats there.

Q. State whether or not it was where the tide ebbed and flowed, or was it not?

A. Well, the tide went, high tides went up just about half of her, where she was standing, the big tides.

Q. And how about when she was in your runway or on your ways, how are your ways?

A. The tide goes up underneath her, you know. That is the high tides. Of course, part of it is dry,

the front part is dry and the aft part is under the water.

Mr. LANDON.—That is all.

Mr. BRONSON.—No cross-examination.

Hearing adjourned, to be resumed by agreement.

[Indorsed]: Testimony reported by Commissioner of Libelants King & Winge. Filed in the U. S. District Court, Western Dist. of Washington. July 10, 1911. R. M. Hopkins, Clerk. [20]

Intervenor Astoria Iron Works Testimony.

Seattle, Washington, June 7, 1911.

Continuation of proceedings.

Present: Mr. DALTON, One of Proctors for Intervenor Astoria Iron Works.

Mr. BRONSON, for the Claimant.

Mr. LANDON, for King & Winge.

[Testimony of John Fox, for Intervenor.]

JOHN FOX, a witness for the above intervenor, being duly sworn, testified as follows:

Q. Mr. Fox, where do you reside?

A. Astoria, Oregon.

Q. Are you connected with the Astoria Iron Works, the intervening libelant? A. I am.

Q. What position do you hold with the Astoria Iron Works? A. President of the company.

Q. Do you know the Sound Motor Company, a corporation, of Seattle, Washington?

A. Yes, sir, I done some business with them.

Q. Do you know the gas boat "Bainbridge," of Seattle, Washington? A. Yes, sir.

(Testimony of John Fox.)

Q. During the year 1909, did your company furnish any material or make any repairs or any alterations of the gas boat "Bainbridge"?

A. Furnished them an engine and outfit complete.

Q. What did the engine and outfit complete consist of, in a general way? Tell us some more about it.

A. Well, it consisted of a four cylinder, seventy-five horse-power engine complete, with shaft, propeller, [21] stuffing-box, stern-bearing, pipes, etc. In fact, we installed the engine in the boat complete and made a trial trip of it. That is with whistle air tacks, etc., except the oil tanks.

Q. State whether or not the boat had other engine equipment in prior to this time.

A. Yes, she had two forty horse-power engines prior to this, and they took them out and we put in the 75 horse-power in place of them.

Q. That is two single engines, what would you call them, twin screw?

A. Twin propeller engines, twin screw engines they are called.

Q. What amount was the value of installing of and the furnishing of this engine and equipment complete, and installing it in the boat?

A. \$3,500 was the amount.

Q. Was there any amount paid to you on that?

A. Yes, they paid with the order \$500 and paid \$500 later after the engine arrived, a total amount of \$1,000, I believe.

Q. After you had this work on the boat, after the

(Testimony of John Fox.)

engine was installed, was there any other work performed upon her by your company?

A. Yes. They broke a propeller and they broke a strut, and we furnished a propeller and strut. That was outside of the contract.

Q. How much did that amount to?

A. The books show one hundred eighty-nine dollars and some cents. I do not recollect the exact amount. [22]

Q. So the amount of \$3,550 was the value of the services and machinery agreed upon between you and the Sound Motor Company?

A. It was, yes, sir.

Q. Who did you do your business with, Mr. Fox, as far as the Sound Motor Company was concerned?

A. Mr. Munk, President of the company. S. S. Munk, I think, it is.

Q. Where was the vessel at this time you performed these services and put the engine in the boat, etc.?

A. I believe it was hauled out at King & Wing's. Hauled out somewhere. I think that was over there. I never seen the boat at all until after the engine was in.

Q. Where are King & Wing's?

A. West Seattle. I am not positive as to that, but that is my understanding. She was laid up, I know, at the time they had trouble with the engines.

Q. State whether or not in the furnishing of the material that you have testified and the work performed on the vessel in placing the engine equip-

(Testimony of John Fox.)

ment in the vessel whether or not you depended upon the credit of the vessel for payment.

A. Any time we furnish anything for any vessel we always hold the vessel, that is, we bill to the vessel and hold the vessel for the repairs.

Q. Well, at the time that you agreed to furnish the machinery and perform these services as you testified to, did you have any understanding of any kind with the Sound Motor Company as to holding the vessel for the payment of the amount in case it was not paid? [23]

A. No, I did not have any understanding to hold the vessel; it was not mentioned. I did not mention it. But it was understood that we were to hold the engine until the final payment was made, but there was nothing said about holding the vessel as I remember.

Q. Was the Sound Motor Company the owner of the vessel at that time? A. Yes, sir.

Cross-examination.

Q. (Mr. BRONSON.) The King & Winge shipyard over here at West Seattle, was that where she was? A. Yes, I believe so; yes.

(Testimony of witness closed.)

[Stipulation That "Bainbridge" is an American Vessel and was in Harbor at Time Libel was Filed.]

It is stipulated that at the time of filing the libel in this case that the "Bainbridge" was in the harbor of Bellingham, within the jurisdiction of this court.

Also that the said "Bainbridge" is an American vessel.

Hearing adjourned. [24]

Seattle, July 10, 1911.

Present: Mr. MILLION, for the Intervenors Zugehoer and Johannson.

Mr. BRONSON, for the Claimant.

[Admission That Claimant was Ignorant of Claims or Liens Against "Bainbridge," etc.]

It is admitted by Mr. E. C. Million, proctor for the intervenors Zugehoer and Johannson, that the claimant in this case knew nothing of any claims or liens against the "Bainbridge" at the time they purchased the vessel, if said admission is material or relevant to the issues in the case.

Testimony closed. [25]

[Commissioner's Certificate to Testimony, etc.]

United States of America,
Western District of Washington,
Northern Division,—ss.

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, Northern Division, residing at Seattle, do hereby certify that

The foregoing transcript from page 1 to page 26, inclusive, contains all the testimony offered by the parties to the foregoing entitled cause before me. That I heard the testimony on the dates shown in the transcript.

The several witnesses, before examination, were by me duly sworn to testify the truth, the whole truth, and nothing but the truth.

Proctors for the parties stipulated waiving the reading and signing of the testimony given by said witnesses.

The exhibits offered appear in the index and are returned by me herewith.

I further certify that I am not of counsel nor in any way interested in the result of this suit.

Witness my hand and official seal this 10th day of July, 1911.

[Seal]

A. C. BOWMAN,
U. S. Commissioner. [27]

COMMISSIONER'S TAXABLE COSTS.

Libelants:

Hearing Dec. 10, 1910.....	\$3.00
Oath to 1 witness.....	.10
Transcript above hearing, 10 folios.....	1.00

	\$4.10

Intervenors Zugehoer and Johanson:

Hearings March 25, April 4, 1911.....	6.00
Oaths to 2 witnesses.....	.20
Filing 1 exhibit.....	.10
Transcript above hearings, 45 folios.....	4.50

	\$10.80

Intervenor Astoria Iron Works:

Hearing June 7, 1911.....	3.00
Oath to 1 witness.....	.10
Transcript above hearing 15 folios.....	1.50
	—
	\$4.60

Claimant's:

Hearing April 4, 1911.....	3.00
Oath to 1 witness.....	.10
Transcript above hearing 5 folios.....	.50
	—
	\$3.60

[Indorsed]: Testimony Reported by Commissioner. Filed in the U. S. District Court, Western Dist. of Washington. July 10, 1911. R. M. Hopkins, Clerk. [28]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4429.

T. J. KING and A. WINGE, Doing Business as KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

INLAND NAVIGATION COMPANY, a Corporation,
tion,

Claimant.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

Libelants' Additional Testimony.

To the Honorable Judges of the Above-entitled Court:

This cause having been re-referred to me on the 22d of January, 1912, the libelants appeared before me by Mr. Daniel Landon, the claimant by Mr. Ira Bronson and the intervenor by Mr. C. C. Dalton, on this 1st day of February, 1912.

Thereupon the following testimony was offered and proceedings had:

[Testimony of A. Winge, for Libelants (Recalled).]

Mr. A. WINGE, one of the libelants, being recalled, testified as follows:

Q. (Mr. LANDON.) Where was the "Bainbridge" during the time you were performing services upon her? A. On our ways.

Q. Where was she before, was she in Puget Sound or Elliott Bay? A. Yes, sir.

Q. What was her condition, was she a boat that was in commission or otherwise?

A. She was in commission. [29]

Q. And these repairs, were they for the purpose of repairing her so that she would be in running order—to assist her in navigation?

A. Yes, certainly. It was repairs on her and improvements.

Q. Do you know whether or not she is an American vessel? A. Sure, she is an American vessel.

Q. And at the time she was libeled, where was she?

A. I could not say where she was; she was down Sound somewheres.

(Testimony of A. Winge.)

Q. She was somewhere on Puget Sound?

A. Yes, sir.

(No cross-examination.)

Testimony of witness closed.

Mr. DALTON.—I did not show in my testimony that she was an American vessel.

Mr. BRONSON.—I suppose she was. She must have been.

Testimony closed. [30]

[**Commissioner's Certificate to Additional Testimony.**]

United States of America,
Western District of Washington,
Northern Division,—ss.

I, A. C. Bowman, a Commissioner of the United States District Court for the Western District of Washington, residing at Seattle in said District, do hereby certify that the foregoing transcript, consisting of two pages, contains all of the testimony offered before me on the re-reference of said cause, said order being dated January 22, 1912.

The stipulation heretofore entered in said cause waiving the reading and signing of the testimony of the witnesses was renewed and applied to this hearing.

And I certify that the testimony set forth herein is the testimony given by the said witness at said time.

I further certify that I am not of counsel nor in any way interested in the result of said suit.

In witness whereof I have hereunto set my hand and seal this 10th day of February, 1912.

[Seal]

A. C. BOWMAN,
United States Commissioner.

COMMISSIONER'S TAXABLE COSTS:

(This Hearing)

Hearing Feb. 1, 1912.....	\$3.00
Transcript and cert.....	1.00
	\$4.00

[Indorsed]: Supplemental Testimony. Filed in the U. S. District Court, Western District of Washington. Feb. 13, 1912. A. W. Engle, Clerk. By S., Deputy. [31]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4429.

T. J. KING and A. WINGE, Copartners Doing
Business as KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

INLAND NAVIGATION COMPANY, a Corporation,
tion,

Claimant.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

Stipulation as to Facts.

It is herein stipulated by and between Mr. Ira Bronson, proctor for the Inland Navigation Company, a corporation, claimant, and Mr. C. C. Dalton, one of the proctors for the Astoria Iron Works, a corporation, intervenor herein, that the following facts are the true facts and shall be considered as additional testimony in the said cause:

I.

That during the years 1909 and 1910, at the time the Astoria Iron Works, intervening libelant herein, performed the labor and furnished the material as alleged in the complaint, the said Astoria Iron Works were and are now a corporation duly organized and existing under the laws of the State of Oregon, and have complied with the laws of the State of Washington entitling the said corporation to do business in the State of Washington.

II.

That the Sound Motor Company at the time the said labor was performed and said material furnished, as alleged in the complaint, was a corporation of the State of Washington with its offices and principal place of business at Seattle, in the State of Washington. [32]

III.

That said gas boat "Bainbridge" was a domestic vessel of the United States, registered in the Customs-House at Port Townsend, Washington, and engaged exclusively in navigating the waters of Puget

Sound within the boundaries of the State of Washington.

Done this 5th day of March, 1912.

C. C. DALTON,

One of the Proctors for Intervening Libelant.

IRA BRONSON,

Proctor for Inland Navigation Company, a Corporation, Claimant.

[Indorsed]: Stipulation as to Facts. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 24, 1912. Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy. [33]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4429.

T. J. KING and A. WINGE, Copartners Doing Business as KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

INLAND NAVIGATION COMPANY, a Corporation,

Claimant.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

Petition for Appeal and Order Allowing Same.

The above-named intervenor and appellant, Astoria Iron Works, a corporation, conceiving itself aggrieved by the decree of said Court, entered on June 13, 1912, in the above-entitled court, hereby appeals from said decree to the United States Circuit Court of Appeals of the Ninth Circuit, and prays that its appeal be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, properly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

C. C. DALTON,

HERBERT W. MEYERS,

Proctors for Intervenor and Appellant.

On reading the foregoing petition and also the assignment of error herewith presented, and after due consideration thereof,

It is ordered, that the said appeal be allowed as prayed for, and that the penalty of the bond on appeal is hereby fixed at the sum of two hundred and fifty dollars.

Dated this 10th day of October, 1912. [34]

CLINTON W. HOWARD,

Judge.

[Indorsed]: Petition for Appeal and Order Allowing Same. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 10, 1912. Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy. [35]

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 4429.

T. J. KING and A. WINGE, Copartners, Doing
Business as KING and WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

INLAND NAVIGATION COMPANY, a Corpora-
tion,

Claimant.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

*In the United States District Court for the Western
District of Washington, Northern Division.*

No. 4429.

T. J. KING and A. WINGE, Copartners, Doing
Business as KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

INLAND NAVIGATION COMPANY, a Corpo-
ration,

Claimant.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

Bond.

KNOW ALL MEN BY THESE PRESENTS:

That we, Astoria Iron Works, a corporation, as principal, and National Surety Company as surety, are held and firmly bound unto gas boat "Bainbridge," respondent above named, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to the said gas boat "Bainbridge," its executors, successors, or assigns, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly and truly by these presents.

Sealed with our seals and dated this 10th day of October, 1912.

Whereas, intervenor above named has sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit on appeal from the judgment of the above-named court in favor of the respondent and against the intervenor in the amount of the costs to be taxed;

Now therefore, the condition of this obligation is such that the above-named defendant shall prosecute said Writ of Error to effect and answer all costs and damages if it shall fail to make [36] good its plea, then this obligation shall be void; otherwise shall be in full force, virtue and effect.

Witness our seals and names hereto affixed the day and year first above mentioned.

ASTORIA IRON WORKS,

By C. C. DALTON,

Attorney.

[Seal] NATIONAL SURETY COMPANY.

By GEO. W. ALLEN,

Attorney-in-fact.

Due, legal and timely service of the foregoing Bond is hereby accepted.

.....,

Attorney for Respondent.

[Indorsed]: Bond. Filed in the U. S. District Court, Western Dist. of Washington, Oct. 10, 1912. Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy. [37]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 4429.

T. J. KING and A. WINGE, Copartners, Doing Business as KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

INLAND NAVIGATION COMPANY, a Corporation,

Claimant.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

Assignment of Error.

The above-named intervenor and appellant, Astoria Iron Works, a corporation, by its counsel, says that in the record and proceedings in said cause there is manifest error, in this, to wit:

- (1) That the Court erred in holding that the evidence failed to prove that there was any agreement or understanding or consent on the part of the owner of the boat required to subject the vessel to a lien.
- (2) That the Court erred in holding as a matter of law that it was necessary to prove that there was an agreement or understanding or consent on the part of the owner of the boat that the labor and materials were furnished upon the credit of the vessel in order to subject the vessel to a lien for material and labor furnished.
- (3) That the Court erred in disallowing the claim of the intervenor by reason of the claim being older than the National lien statute of 1910. [38]
- (4) That the Court erred in declining to decree judgment to the intervenor for the amount found, as a matter of fact, to be due.

WHEREFORE, the said intervenor, plaintiff in error, prays that the judgment of the said trial Court be reversed as to it and that the District Court of the United States for the Western District of Washington, Northern Division, be directed to enter judg-

ment for the intervenor for the full amount due as established by the evidence, and for costs.

C. C. DALTON and
HERBERT W. MEYERS,

Proctors for Intervenor and Appellants.

[Indorsed]: Assignment of Error. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 10, 1912. Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy. [39]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 4429.

T. J. KING and A. WINGE, Copartners Doing Busi-
ness as KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.

INLAND NAVIGATION COMPANY, a Cor-
poration,

Claimant.

ASTORIA IRON WORKS, a Corporation,

Intervenor.

Notice of Appeal.

To the Above-named Plaintiffs and to Daniel Lan-
don, Their Attorney, and to Gas Boat "Bain-
bridge," etc., and to Ira Bronson, Their Attor-
ney:

You and each of you will please take notice that
intervenor in the above-entitled action hereby ap-
peals to the Circuit Court of Appeals of the United

States for the Ninth Judicial Circuit, from the judgment therein entered, in the above-named United States Circuit Court on the 1st day of July, 1912, in favor of libelants in said action, and against the intervenor, Astoria Iron Works, and from the whole and each and every part thereof, and also from the order denying the said Intervenor's motion for new trial, made and entered in the minutes of the Court on the 3d day of June, 1912.

Dated this 14th day of August, 1912.

C. C. DALTON,

HERBERT W. MEYERS,

Attorneys for Intervenor.

Copy of within Notice of Appeal received and due service of the same acknowledged this 14th day of Aug., 1912.

IRA BRONSON. [40]

[Indorsed]: Notice of Appeal. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 24, 1912. Frank L. Crosby, Clerk. F. A. Simpkins, Deputy. [41]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 4429.

T. J. KING and A. WINGE, Doing Business as
KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

ASTORIA IRON WORKS,

Intervenor.

INLAND NAVIGATION COMPANY, a Corpora-
tion,

Claimant.

Praeipie [for Record on Appeal].

To the Clerk of the Above-entitled Court:

You will please prepare record on appeal, including: Intervening Libel and Answer to same, Commissioner's Report, Findings of Fact and Conclusions of February 13, 1912, Order Permitting Intervention, Order of Reference, ~~Exceptions to Commissioner's Report~~, Memorandum Decision of June 13, 1912, Decree of Dismissal as to Astoria Iron Works filed July 1, 1912, Testimony of Libelants King and Winge, and Additional Testimony of Libelants King and Winge and of Intervening Libelants, Stipulation entered into between Intervening Libelants and Claimant, Petition for Appeal, Order Allowing Appeal, Bond, Assignment of Error, Citation, Praeipie, Notice on Appeal.

C. C. DALTON,

HERBERT W. MEYERS,

Attorneys for Intervenor.

[Indorsed]: Praeipie. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 10, 1912. Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy. [42]

[**Certificate of Clerk U. S. District Court to Apostles,
etc.**]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 4429.

T. J. KING and A. WINGE, Doing Business as
KING & WINGE,

Libelants,

vs.

Gas Boat "BAINBRIDGE," etc.,

Respondent.

ASTORIA IRON WORKS,

Intervenor.

INLAND NAVIGATION COMPANY, a Corpora-
tion,

Claimant.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify the foregoing 46 typewritten pages, numbered from 1 to 46, inclusive, to be a full, true and correct copy of the record and proceedings in the above and foregoing entitled cause, as is called for by the praecipe of proctors for intervenor and appellant, as the same remain of record and on file in the office of the Clerk of said Court, and that the same constitutes the Apostles on appeal from the order, judgment and decree of the District Court of

the United States for the Western District of Washington, to the Circuit Court of Appeals for the Ninth Judicial Circuit at San Francisco, California.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

I further certify that the cost of preparing and certifying [43] the foregoing Apostles on appeal is the sum of \$31.10, and that the said sum has been paid to me by Messrs C. C. Dalton and Herbert W. Meyers, proctors for intervenors and appellants.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Seattle, in said District, this 29th day of October, 1912.

[Seal]

FRANK L. CROSBY,

Clerk. [44]

[Citation on Appeal.]

UNITED STATES OF AMERICA—ss.

The President of the United States, to the Gas Boat
“Bainbridge,” Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, within thirty days from the date of this Citation, pursuant to an appeal filed by the intervenor and appellant, Astoria Iron Works, in the office of the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, in a cause wherein T. J. King & A. Winge, copartners, doing business as King & Winge, are libelants, Astoria Iron Works,

a corporation, is intervenor and appellant, and the gas boat "Bainbridge" is respondent, to show cause if any there be why the decree against the intervenor and appellant should not be reversed and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the Supreme Court of the United States, this 10th day of October, 1912.

[Seal] CLINTON W. HOWARD,
District Judge of the United States District Court,
Western District of Washington.

Due service of the within Citation after the filing of the same in the office of the Clerk of the above-entitled court is hereby admitted this 10th day of October, 1912.

IRA BRONSON,

Proctor for Claimant. [45]

[Indorsed]: No. 4429. In the District Court of the United States for the Western District of Washington, Northern Division. T. J. King & A. Winge, Libelants, vs. Gas Boat "Bainbridge," Respondent. Inland Navigation Co., Claimant. Astoria Iron Works, a Corporation, Intervenor. Citation. Filed in the U. S. District Court, Western Dist. of Washington. Oct. 10, 1912. Frank L. Crosby, Clerk. By F. A. Simpkins, Deputy. Herbert W. Meyers, Attorney at Law, 430-433 Pioneer Building, Seattle, Wash. [46]

[Endorsed]: No. 2196. United States Circuit Court of Appeals for the Ninth Circuit. Astoria Iron Works, a Corporation, Intervenor, Appellants, vs. Inland Navigation Company, a Corporation, Claimant of the Gas Boat "Bainbridge," Her Tackle, etc., Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed November 7, 1912.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

9

IN THE
**United States Circuit Court
of Appeals**

FOR THE NINTH CIRCUIT.

ASTORIA IRON WORKS, a corpora-
tion,

Intervenor and Appellant.

vs.

GAS BOAT BAINBRIDGE, ETC.,
Appellee.

INLAND NAVIGATION COM-
PANY, a corporation,
Claimant.

T. J. KING & A. WINGE, co-part-
ners doing business as KING &
WINGE,

Libelants.

No. 2196

Brief of Intervenor and Appellant

STATEMENT.

Upon the hearing of this libel before the Court Commissioner, the Commissioner found that, as a matter of fact, the Astoria Iron Works, intervenor,

at the special instance and request of the owners of the gas boat "Bainbridge," furnished certain gas engines and other fixtures which were installed in the said boat Bainbridge, of the reasonable value of \$3,550.00, and, also, furnished extra material and labor of the value of \$189.00, making a total of \$3,739, no part of which sum has been paid, except \$1,000, leaving a balance due and owing to the Astoria Iron Works of \$2,739. The Commissioner failed to find that an agreement had been made between the Astoria Iron Works and the owners of the gas boat Bainbridge, under the terms of which the said engines, fixtures and labor were to be furnished or performed upon the faith and credit of the said gas boat Bainbridge. In view of his failure so to find, the Commissioner concludes that no lien attaches in favor of the Astoria Iron Works, intervenor, for the sum found to be due, and omitted to establish the right of the intervening libelant to such lien against the gas boat Bainbridge, in his "conclusions of law" submitted to the Court. The intervening libelant excepted to the Commissioner's finding of fact "that no agreement was made between the intervening libelant and the owners of said respondent that said en-

gines, fixtures and labor should be performed on the faith and credit of the said Bainbridge, and to the ruling of the Commissioner in refusing to hold, as a conclusion of law, that the intervening libelant is entitled to a lien against the Bainbridge in the sum of \$2,739, and costs and disbursements. Upon hearing of the argument of the intervening libelant upon the exceptions taken to the finding and conclusion of the Commissioner, the Court held that, while the amount of the claim had been established, the evidence failed to prove that there was any agreement or understanding or consent on the part of the owner of the boat required to subject the vessel to a lien under the rule established by the decision of the Circuit Court of Appeals in the case of the *Alaska & Pacific Steamship Company v. C. W. Chamberlain*, 116 Fed. 600, and, as the claim was older than the national lien statute of 1910, the claim was disallowed.

The intervening libelant prosecutes its writ of error to this Court upon the error of the trial court in holding

(1) That the evidence failed to prove an agreement, understanding or consent on the part of the

owner of the boat required to subject the vessel to a lien.

(2) That it was necessary to prove that there was such an agreement or understanding or consent.

(3) That the claim should be disallowed, and

(4) That the intervening libelant was not entitled to judgment.

ARGUMENT.

The attention of this Court is called to the fact, as found by the lower Court, that the intervening libelant did furnish certain gas engines, fixtures and labor to the owners of the Bainbridge of the reasonable value of \$3,739, and there is now due and owing to the said intervening libelants the sum of \$2,739. In view of this finding of fact it must be considered that the Court failed to find, as a matter of law, that the intervening libelant was entitled to a lien for the sum found to be due because he did not find that there was an agreement between the intervening libelants and the respondent that the engines, fixtures and labor should be furnished and performed upon the faith and credit of the Bainbridge. In

this connection, the intervening libelant contends that it is entitled to a lien against the Bainbridge, upon the establishment of the fact that engines, fixtures and labor were furnished and not paid for, regardless of whether or not there was any contract between the owner and the intervening libelant, based upon the faith and credit of the vessel, in view of the statute of the State of Washington, which makes all steamers, vessels and boats, their tackle, apparel and furniture liable:

“For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, sub-contractors or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of this chapter.”

Sec. 1182, R. & B., p. 2.

It will be noticed that this statute of the State of Washington gives a lien to material men for supplies and labor furnished to a local vessel in its home port in this State. The gas boat Bainbridge was a small vessel owned in, and whose home port was, the city of Seattle, in which home port the materials and labor were supplied and furnished, and the vessel was exclusively engaged in navigating the waters of Puget Sound, and entirely within the boundaries of the State of Washington. It is held by the Supreme Court of the United States that in the case of repairs or necessaries furnished in the port or state to which the ships belong, the case is governed by the local law of the state altogether, as no lien is implied, unless it is recognized by that law; but if, however, the local law gives a lien, it may be enforced in the admiralty in proceedings *in rem*.

The General Smith, 4 Wheat. 438 (4 L. Ed. 609).

The Steamboat Planter, 7 Pet. 324 (8 L. Ed. 700).

Ramsay v. Allagree, 12 Wheat. 611 (6 L. Ed. 746).

J. E. Rumbell, 148 U. S. 1 (37 L. Ed. 345).

The St. Jago De Cuba, 9 Wheat. 409 (6 L. Ed. 122).

The Lottawanna, 21 Wall. 558 (22 L. Ed. 654).

The Edith, 94 U. S. 518 (24 L. Ed. 167).

New Jersey Steam Nav. Co. & Merchants Bank, 6. How. 344 (12 L. Ed. 4651).

The John G. Stevens, 170 U. S. 113 (42 L. Ed. 969).

Perry vs. Haines, 191 U. S. 17 (48 L. Ed. 73).

The Glide, 167, U. S. 606 (42 L. Ed. 296).

In the case of *The Glide*, 167 U. S. 606, the exact point involved in this present case was passed upon by the United States Supreme Court, and it was in the opinion said:

“The question in this case is whether the lien given by a statute of Massachusetts for repairs made upon a vessel in her home port, under a contract with her owners or their agent, may be enforced against her by petition in a court of the state, as provided in that statute, or can be enforced only in an admiralty court of the United States.”

After an exhaustive review of the decisions of the court in similar cases, the opinion of the court upon the question involved is stated in this language:

“In conclusion, the consideration by which this case must be governed may be summed up as follows: The maritime and admiralty jurisdiction conferred by the constitution and laws of the United States upon the district courts of the United States is exclusive.

A lien upon a ship for repairs or supplies, whether created by the general maritime laws of the United States, or by a local statute, is *a jus in re*, a right of property in the vessel, and a maritime lien, to secure the permanence of a maritime contract, and therefore may be enforced by admiralty process *in rem* in the district courts of the United States. When the lien is created by the general maritime law for repairs or supplies in a foreign port no one doubts at the present day that under the decisions in *The Moses Taylor* and the *Ad. Wine*, 74 U. S., 4 Wall 411, above cited, the admiralty jurisdiction *in rem* of the courts of the United States is exclusive of similar jurisdiction of the courts of the state.

The contract and the lien for repairs or supplies in a home port, under a local statute, are generally maritime and equally within the admiralty jurisdiction, and that jurisdiction is equally exclusive.”

In the case of *Perry v. Haines*, 191 U. S. 17, the United States Supreme Court said:

“That a state may provide for liens in favor of material men for necessaries furnished to a vessel in her home port, or in a port of the state to which she belongs, though the contract to furnish the

same is a maritime contract, and that such liens can be enforced by proceedings *in rem* in the district courts of the United States, is so well settled by a series of cases in this court as to be no longer open to question. The remedy thus administered by the admiralty court is exclusive * * *."

And again in the same case, the court says of contracts of the character of the contract in the present case:

"It is believed that, since the case of *The Belfast*, the distinction has never been admitted between contracts concerning vessels engaged in trade between ports of the same, and between ports of different states. Of course, nothing herein said is intended to trench upon the common law jurisdiction of the state courts, which is and always has been, expressly saved to suitors 'where the common law is competent to give it.'

By that law, an action will always lie against the master or owner of the vessel, and, if the laws of the state permit it, the vessel may be attached as the property of the defendant in the case * * *. A statute providing that a vessel may be sued and made defendant without any proceeding against the owners, or even mentioning their names, partakes of all the essential features of an ordinary proceeding *in rem*, of which exclusive jurisdiction is given to the district courts of the United States * * *. The action against the boat by name, authorized by the statute of California, is a proceeding in the nature, and with the incidents, of a suit in ad-

miralty. The distinguishing and characteristic feature of such suit is that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is judged and sentenced accordingly.”

Not only do the terms of the contract in this case stamp the contract as a maritime contract, but the statute of the state governing the enforcement of the lien in such cases clearly and definitely recognizes and establishes them as maritime contracts and liens, when it says:

“Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, *in rem*, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by civil action in any district court of this territory.

Sec. 1183, R. & B.

And,

“The liens hereby created may be enforced by a suit, *in rem*, and the law regulating like proceedings shall govern in all such suits.”

Sec. 1186, R. & B.

So that the lien which the intervening libellant asks to have enforced by the Federal Court is a strictly maritime lien given by the statute of the state and, being such, a lien is cognizable and enforceable only by the Federal Courts.

The Court did not give a lien against the vessel evidently for the reason that he did not find the contract made upon the faith and credit of the vessel. The lien is a creature of the statute, in this instance, and the statute creating it does not specify that, in order for the lien to arise or attach, the material furnished, or work done, shall be furnished or done *upon the faith and credit of the vessel*, nor does it place any other restriction upon it. It creates a lien whenever materials are furnished or labor performed in the construction, repair or equipment of vessels *at the request of their owners* or other persons by the owners authorized, which lien is enforceable in the courts of the United States.

Again referring to the case of *The Glide, supra.*, the Court said:

“The only point directly adjudged in *The General Smith* was that there was no lien for repairs or supplies in the home port, which could be enforced *in rem* in admiralty, *unless such a lien was recognized by the local law of the state. But the opinion clearly implied that, if so recognized, the lien could be enforced in rem in a court of the United States sitting in admiralty.*”

Now it must be conceded that the lien in this case is given and recognized by the local laws, and

that it may be enforced in the United States courts. It is equally true that the lien is not restricted to materials furnished or labor done upon the faith and credit of the vessel, since it is to lie if the materials and labor are provided "at the request of the owner." There would seem to be no reason nor way for the United States court to decline to enforce the lien thus created, since the jurisdiction is exclusive.

The question is, therefore: Is a case arising entirely under the laws of the state of Washington cognizable by the United States courts, to be enforced in those courts strictly according to the law of the state, or is it to be enforced partly according to the law of that state and partly according to the law of some other state, or the general maritime law? If according to the law of that state alone, then a lien given for material and labor furnished at the request of the owner of the vessel must be enforced regardless of whether or not the materials and labor were furnished under a contract "upon the faith and credit of the vessel."

In the memorandum decision handed down by the trial court upon the exceptions taken to the finding of fact and conclusion of law by the com-

missioner, the court bases its opinion upon the holding of this Court in the Robert Dollar case. (*Alaska Pacific Steamship Co. vs. C. W. Chamberlain*, 116 Fed. 600.)

The appellant contends that there is a material distinction between the present case and the case cited, and that the case of the "Robert Dollar" supports the contention as made in the present case.

In the Dollar case the record shows that the appellee, upon order of the Alaska Pacific Steamship Co. sold *supplies* and delivered them on board the steamship *for the use of crew and passengers*, while in the case now under consideration the engines, fixtures, etc., were delivered on board the Bainbridge *and became a part of that vessel*. If, in the Dollar case

"The supplies having been furnished to the charterer, and at the place of its residence, the presumption is that credit was given to the charterer, *and not to the vessel*;

by the same parity of reasoning might it not be equally as well said that:

The engines, fixtures, etc., having been furnished to the Bainbridge and attached to and made

a part of that vessel, at her home port, the presumption is that credit *was given to the vessel*, and not to the owners?

While it may be true that a contract for *supplies* for a vessel made directly with the owner in person is presumed to have been made on his ordinary responsibility without a view to the vessel as a fund from which compensation is to be derived, it cannot well be said that the *motive power and other fixed parts* of the vessel—fixtures attached to and made a part of the vessel—can be presumed to have been delivered to the vessel without it being in contemplation of both the parties to the transaction—the vendor and vendee—that for non-payment of the purchase price the vendor should have recourse to the vessel.

“It is not necessary, it is true, that the common intent so to bind the vessel be expressed in words *or in the form of an agreement*. It may be established by *proof of circumstances* from which the common intent may be *deduced*, but in all cases it is essential that the evidence shall show a purpose upon the part of the seller to sell upon the credit of the vessel, and upon the part of purchaser to pledge the vessel. In short, there can be no lien unless it was in the contemplation of both parties to the transaction, evidenced either by express words

to that effect or by circumstances of such a nature as to justify the inference.”

Alaska Pacific S. S. Co. v. C. W. Chamberlain, 116 Fed. 600.

It may be reasonable to presume that a person who sold supplies for the use of the crew and passengers of a vessel, and which supplies were not to become a part of the vessel itself, might not have in contemplation any right to believe that he might look to the vessel itself for satisfaction of his claim for pay for the supplies for the crew and passengers so delivered by him, in view of the fact that such supplies would not remain tangible objects and recoverable by the seller upon proper legal process, but in no transaction concerning the sale and delivery of material, tangible articles sold and delivered for the purpose of being made a part of a vessel, building, etc., would either the vendor or purchaser eliminate from the transaction, by so much as a thought, the right of the vendor to retake the property from the vessel upon proper process, in the event of the arising of his right so to do, for any cause.

In the testimony of John Fox, President of the appellant corporation, will be found:

“Q. State whether or not in the purchasing of the material that you have testified and the work performed on the vessel in placing the engine equipment in the vessel whether or not you depended upon the credit of the vessel for payment?

A. Any time we furnish anything for any vessel we always hold the vessel, that is, we bill the vessel and hold the vessel for the repairs.

Q. Well, at the time that you agreed to furnish the machinery and perform these services as you testified to, did you have any understanding of any kind with the Sound Motor Company as to holding the vessel for payment of the amount in case it was not paid?

A. No, I did not have any understanding to hold the vessel, it was not mentioned; I did not mention it, but it was understood that we were to hold the engine until the final payment was made, but there was nothing said about holding the vessel, as I remember.”

In view of the fact that the engine was to be placed in and become a part of the vessel before final payment was to be made for it, an understanding that the seller was “to hold the engine until the final payment was made” is tantamount to an understanding that the vessel was to be held, since if the engine be held and recovered upon proper proceeding, the vessel itself would, of necessity, be held also.

Special attention is called to the fact, as shown by the testimony of witness Fox, that the materials, engines, etc., were billed to the "Bainbridge" and not to the owner of the vessel. It is submitted that this fact, being within the knowledge of the owner and not objected to by him at the time, is an additional *circumstance* from which may be *deduced* an intent upon the part of the owner to recognize the right and intention of the seller to hold the vessel for payment and to estop the owner from asserting that it was the intention to hold the owner for payment on his own responsibility. If such be true, is it not a "*circumstance of such a nature as to justify the inference*" that the parties to the transaction contemplated "the vessel as the fund from which compensation is to be derived," and thereby charge the vessel, instead of the owner "on his ordinary responsibility"?

Having shown *circumstances* from which *common intent* to bind the vessel may be *deduced*, it is submitted that in accord with all adjudicated cases wherein this identical point has been raised, including the Dollar case, cited in the memorandum decision in the present case, there was error in the ruling of the trial court, and prays that this court

make the necessary order to the end that the said error be corrected and the rights of the intervening libelant established. All of which is respectfully submitted.

C. C. DALTON,
HERBERT W. MEYERS,

Proctors for Intervening Libelant and Appellant.

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IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

ASTORIA IRON WORKS, a
corporation,

Appellant,

—vs.—

INLAND NAVIGATION COM-
PANY, a corporation, Claimant of
the Gas Boat "BAINBRIDGE,"
her tackle, etc.,

Appellee.

No. 2196

BRIEF OF APPELLEE

STATEMENT.

In 1909 and 1910 at Seattle, Washington, the appellant, Astoria Iron Works, installed certain engines and fixtures in a domestic vessel called the "Bainbridge." These installations were made at the request of the vessel's then owner, Sound Motor

Company, a corporation, with headquarters at Seattle; and with labor and material amounted in value to the sum of \$3,739.00, of which sum \$1,000.00 was paid by the Sound Motor Company. (Rec. 11, 12, 31).

In December, 1910, the appellant filed its intervening libel claiming a lien upon the "Bainbridge" for the above work in the amount of \$3,020.30. Her then owner, Inland Navigation Company, appellee here, denied all the allegations of the libel, chiefly for want of sufficient knowledge or information to form a belief concerning the same. (Rec. 4, 8).

Subsequently evidence was taken upon the part of the appellant, and the appellee offering none, the cause was submitted to the Court which held that the claim being older than the National Lien Statute of 1910—and there being no proof that the work was done upon the credit of the vessel—that the said claim should be disallowed under the authority of *Alaska & P. S. S. Co. et al. vs. C. W. Chamberlain & Co.*, 116 Fed., 600; a decision rendered by this Court in 1902. (Rec. 15, 16).

From such holding this appeal has been taken.

ARGUMENT.

I.

AS A MATTER OF LAW A COMMON INTENT ON THE PART OF BOTH PARTIES TO THE TRANSACTION TO BIND THE VESSEL IS NECESSARY TO CREATE A LIEN EVEN UNDER A STATE STATUTE.

The appellant sought in the lower court to establish a lien under the Washington Statute for repairs made upon a vessel at Seattle, her home port, at the request of a corporate owner, with offices and principal place of business at Seattle, and having failed to do so, appeals assigning among other errors the following:

“(2) That the court erred in holding as a matter of law that it was necessary to prove that there was an agreement or understanding or consent on the part of the owner of the boat that the labor and materials were furnished upon the credit of the vessel in order to subject the vessel to a lien for material and labor furnished.”

It is plain that appellant asks this court to reverse its decision heretofore rendered in the case of *Alaska & P. S. S. Co. et al. vs. C. W. Chamberlain*, 116 Fed. 600, for in that case, involving a claim of lien, under the Washington statute, for provisions furnished a vessel at Seattle, her home port, at the request of a corporate owner with offices and principal place of business at Seattle, this Court said:

“In short there can be no lien unless it was in the contemplation of both parties to the transaction, evidenced either by express words to that effect or

by circumstances of such a nature as to justify the inference.”

The rule of that decision was reiterated by this court in 1910, the court saying through Ross, Circuit Judge:

“The presumption that attends the making and furnishing of such supplies to a ship in a foreign port upon the orders of her master is not sufficient to establish a valid lien on a vessel in her home port given only by virtue of a local law. In the latter case, proof that the supplies were furnished upon the credit of the ship is essential to the validity of the lien (*Alaska & P. S. S. Co. vs. C. W. Chamberlain & Co.*, 116 Fed. 600, 54 C. C. A. 56), and proof, either express or implied, that both parties to the transaction so understood.”

The F. A. Kilburn, 179 Fed. 107.

The case has further been cited and followed as persuasive authority in an opinion by Cross, District Judge of the U. S. District Court of New Jersey, and again by Hazel, District Judge of the Western District of New York.

The Alligator, 153 Fed. 219.

The William P. Donnelly, 156 Fed. 305.

The rule has long obtained in the Second Circuit.

A claim of lien for coal furnished a domestic vessel in her home port under a New York statute was thus disposed of by Lacombe, Circuit Judge:

“Under a state statute, however, as well as under the general maritime law, a lien will not attach

unless it appears that credit was given to the ship. This Court so held after a careful discussion of the authorities in *The Electron*, 74 Fed. 689, 21 C. C. A. 12.”

The Golden Rod, 151 Fed. 9.

The same rule has been followed in the sixth circuit. In discussing the matter with regard to the Michigan Statute, Taft, Circuit Judge, points out that although the courts of the United States will enforce liens created by state statutes of this character, they will and must import into such statutes the limitations which are always applicable to this general class of liens under the admiralty law. He then holds that one of these limitations is that to claim a lien, credit must be given to the vessel, and concludes:

“It follows from these authorities that the Courts of Admiralty will not enforce a maritime lien against a vessel for supplies created by a state statute, unless the supplies were furnished upon the credit of the vessel for that is indispensable to the existence of liens of this class.”

The Samuel Marshall, 54 Fed. 396-404.

Without wasting time in further citation, for the above citations do not even begin to be exhaustive, let us consider upon what authorities the appellant bases its contention that the *Chamberlain* case be overruled. Presumably they are the cases cited upon pages six and seven of its brief. But these cases merely hold that if the local law gives a lien

it may be enforced in admiralty. No one disputes that proposition. These cases do not seem to us to militate against the principle of the *Chamberlain* case in any particular, nor have they so seemed to others better qualified to judge. Selecting one or two of appellant's cases at random we find that the *Lottowanna*, 21 Wall, 558, was the basis upon which Judge Taft built his opinion in the *Samuel Marshall*, from which we have quoted above. In the *Electron*, 74 Fed. 694, Shipman, Circuit Judge, said:

“The Court in the *Lottowanna* case further said: ‘Of course, this modification of the rule cannot avail where no lien exists; but where one does exist, no matter by what law, it removes all obstacles to proceedings in rem, if credit is given to the vessel.’ If full force is given to the last clause of the sentence, it is an implication that no proceedings in rem can be had against domestic ships, if no credit has been given to the vessel, and that such credit necessarily preceded any lien which could be recognized by an admiralty court. In the *Howard*, 29 Fed. 604, a case under the New Jersey statute, this was understood by Judge Wales to be the law of the *Lottowanna*. The case was one of supplies furnished to charterers at the home port of New Jersey, and was regarded as one exclusively of fact, and upon a finding that no credit had been given to the vessel the libel was dismissed.”

The *Lottowanna* case is also cited together with the *Chamberlain* case in the *William P. Donnelly*, 156 Fed. 303, in deciding that a lien on a domestic vessel for supplies furnished in her home port will not attach in the absence of proof that credit was given to the vessel.

The Glide, 157 U. S. 606, which we find at the end of appellant's list and which the appellant says passes upon "the exact point involved in this present case," and from which it quotes with liberality, decides merely that these state statute liens cannot be enforced by admiralty proceeding *in rem* in the state courts; but in a *dictum*, quoting by the way from the *J. E. Rumbel*, 148 U. S. 1, another of appellant's cases, cited in its list as militating against the *Chamberlain* case, the Court says that "the lien created by the statute of a state for repairs or supplies furnished a vessel in her home port rests * * * on the credit of the ship herself * * *"

The cases cited by appellant have no bearing upon the question at hand and do not modify the *Chamberlain* case in any way, much less do they call for its reversal. In fact few if any cases can be found in the reports that are grounded upon better reason or supported by more overwhelming authority.

II.

AS A MATTER OF FACT APPELLANT'S EVIDENCE AFFIRMATIVELY SHOWS AN ABSENCE OF COMMON INTENT TO BIND THE VESSEL.

The appellant does not even clearly plead, much less prove, that the materials furnished and work done was furnished upon the credit of the vessel. In fact it expressly and affirmatively proved the contrary. His pleading is as follows:

“The material furnished and work done was done within less than three years, and those performing and furnishing the same relied on the assurance of the owners and the agents, and at the same time they believed that they could hold the said gas boat “Bainbridge” for said work and material.” (Rec. 6.)

“Relied on the assurances.” What kind of assurances, guarantees, promises of payment, or what, and of what materiality is their belief? But let us see if these indefinite allegations are clarified by the evidence upon which appellant relies and which it quotes on page 16 of its brief.

“Q. State whether or not in the purchasing of the material that you have testified and the work performed on the vessel in placing the engine equipment in the vessel whether or not you depended upon the credit of the vessel for payment?

“A. Any time we furnish anything for any vessel we always hold the vessel, that is, we bill the vessel and hold the vessel for the repairs.”

With respect to this we quote from the *Chamberlain* case:

“In *The Valencia* it was said: ‘In the absence of an agreement, express or implied, for a lien, a contract for supplies, made directly with the owner in person, is to be taken as made on his ordinary responsibility, without a view to the vessel as the fund from which compensation is to be derived.’ That presumption may be rebutted only by proof that credit was in fact given to the vessel. But in order to establish that fact it is necessary to show that such was the intention of both parties to the

transaction. It is not sufficient that the vendor so understood, or that he charged the supplies to the vessel, and so entered them upon his books of account.”

The remainder of the evidence upon which appellant relies is as follows:

“Q. Well, at the time that you agreed to furnish the machinery and perform these services as you testified to, did you have any understanding of any kind with the Sound Motor Company as to holding the vessel for payment of the amount in case it was not paid?

“A. No, I did not have any understanding to hold the vessel, it was not mentioned; I did not mention it, but it was understood that we were to hold the engine until the final payment was made, but there was nothing said about holding the vessel, as I remember.”

Again we quote from the *Chamberlain* case:

“In all cases it is essential that the evidence shall show a purpose upon the part of the seller to sell upon the credit of the vessel, and upon the part of the purchaser to pledge the vessel. In short, there can be no lien unless it was in the contemplation of both parties to the transaction, evidenced either by express words to that effect or by circumstances of such a nature as to justify the inference.”

The above quotations set forth all the evidence upon which appellant relies. So far from proving a common understanding, it expressly disproves it. The president of the appellant company who alone made the bargain, says: “No, I did not have any

understanding to hold the vessel; it was not mentioned; but it was understood that we were to hold the engines until final payment was made, but there was nothing said about holding the vessel, as I remember.’’

This is good evidence that appellant intended to sell some engines on an oral conditional contract of sale. It is a flat disclaimer of an intention to create an admiralty lien on a vessel. Nor is there any evidence tending to show the state of mind of the owner.

The appellant seeks to disprove its own evidence by deductive reasoning, but there is here no field for the use of that form of intellectual acrobatics. The appellant affirmatively proved in the lower court that there was no intent on its part to bind the vessel. How, then, shall we now deduce that there was a common intent to do so?

For the foregoing reasons, we respectfully pray that the judgment of the lower Court in all things be affirmed and the appellee granted judgment for costs.

Respectfully submitted,

IRA BRONSON,
J. S. ROBINSON,
Proctors for Appellee.

IN THE
**United States Circuit Court
of Appeals**

FOR THE NINTH CIRCUIT.

ASTORIA IRON WORKS, a corpora-
tion,

Intervenor and Appellant,

vs.

GAS BOAT BAINBRIDGE, ETC.,
Appellee.

INLAND NAVIGATION COM-
PANY, a corporation,

Claimant.

T. J. KING & A. WINGE, co-part-
ners doing business as KING &
WINGE,

Libelants.

No. 2196.

**Reply Brief of Intervenor
and Appellant**

The statement that "appellant sought in the lower court to establish a lien under the Washington statutes for repairs made upon a vessel at Seattle," as stated in the first paragraph of the argument page 3, of the brief of appellee is at variance

with the facts, and at variance with appellee's statement of the case.

Appellant sought in the lower court to establish a lien under the Washington statutes for "*installing certain engine and fixtures* in the vessel, of the value of \$3,550.00 and also furnished extra material and labor of the value of \$189.

There is a marked distinction between repairs to a vessel and the installing of *Engine* and *fixtures* in the *construction* of the vessel.

This vessel was practically re-constructed by appellant. The former two forty horse engines propellers, etc., were taken out and a four cylinder, seventy-five horse power engine complete, with shaft, propeller, stuffing box, stern bearing, pipes, etc. installed. (Testimony John Fox rec. p. 22.)

There is also a marked distinction between the furnishing of supplies to a vessel and the installing of *Engine*, and *Fixtures* in the *construction* of the vessel.

Appellant contends as a matter of law, that it is not necessary to prove that there was an agreement or understanding, or consent on the part of the

owner of the vessel that the engine fixtures etc., installed in the construction of the vessel were furnished upon the credit of the vessel, in order to subject the vessel to a lien.

Appellant does not intend to ask this court to reverse its decision heretofore rendered in the case of *Alaska & P. S. S. Co., et al. vs. C. W. Chamberlain*.

In that case the claim was for provisions furnished the vessel for the use of the passengers and crew. In the case at bar, the claim is for engine and fixtures used in the construction of the Bainbridge.

In the case cited by appellant, holding such an agreement, understanding, or consent necessary to bind the vessel, the claims were for supplies, except in the *Runbel* case, where the claim was for supplies and repairs.

The four-cylinder, seventy-five horse-power engine complete, with shaft, propeller, stuffing box, stern bearing, pipes, etc., are as much a part of the vessel as the hull.

Appellant's evidence affirmatively shows an understanding and consent to bind the vessel.

Mr. Fox testified that he depended upon the credit of the vessel. The engine, etc. was billed to the vessel.

It was understood between Mr. Fox and Mr. Monk for the then owner of the vessel, that "we were to hold the engine until the final payment."

Certainly that was intended, and what was understood, was, that the engine would be held as part of the vessel, and not as a unit, separate and a part from the vessel, removable as a cable or an anchor.

To remove this engine from the boat would practically destroy the boat, and would not be permitted. As well give up the entire vessel as to permit the removal of this engine etc.

These are circumstances of such a nature as to justify the inference that the understanding was, to hold the vessel, and that the appellant depended upon the credit of the vessel, which appears plain when taken into consideration with the testimony of Mr. Fox.

Respectfully submitted,

C. C. DALTON,

HERBERT W. MEYERS,

Proctors for Appellant.

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

ASTORIA IRON WORKS, a
corporation,
Intervenor and Appellant,

vs.

GAS BOAT "BAINBRIDGE,"
etc.,

Appellee.

INLAND NAVIGATION COM-
PANY, a corporation,

Claimant,

T. J. KING & A. WINGE, co-
partners doing business as
KING & WINGE,

Libelants.

No. 2196

APPELLEE'S PETITION FOR REHEARING

TO THE ABOVE ENTITLED COURT:

Comes now the appellee in the above entitled cause and respectfully petitions for a rehearing therein for the following reasons:

I.

Because in rendering its decision the Court seems to have been under a misapprehension as to the facts, in that the Court seems to have understood that there was some privity between the Intervenor, Astoria Iron Works, and the libelant, King & Winge by reason of which a pledge of the credit of the vessel to King & Winge would inure to the benefit of the Intervenor; or in other words that there was some such relation between the parties that proof of intention to pledge the credit of the vessel to King & Winge would constitute proof of intent to so pledge as to the Astoria Iron Works. This is not the case.

II.

Because it does not seem to have been made clear to the Court that the lien here claimed is founded on the same identical statute as the lien claim was founded upon in the case of *Alaska & P. S. S. Co. vs. Chamberlain*, 116 Fed., 600, and that there is no distinction made in that statute between "supplies" and "work done or material furnished" or "repairs or equipment." Accordingly

there is no warrant for discrimination between them and the weight of evidence to establish the fact that credit was given to the vessel should be the same whether the lien is claimed for supplies or equipment.

III.

Because the testimony of appellant's president is consistent with an intention to make an oral conditional sale of engines—a species of contract good in the state where the appellant resides,—and cannot justly be construed to show an agreement to rely on the credit of the whole vessel, particularly when he categorically says: “No, I did not have any understanding to hold the vessel. It was not mentioned.”

IV.

Finally we believe that these apparent misconceptions before referred to occurred because at the request of the appellant we consented that the cause should be submitted on briefs. Thus deprived the Court of the aid and assistance of the argument of the proctors for both sides. We believe that on this account that a wrong result was

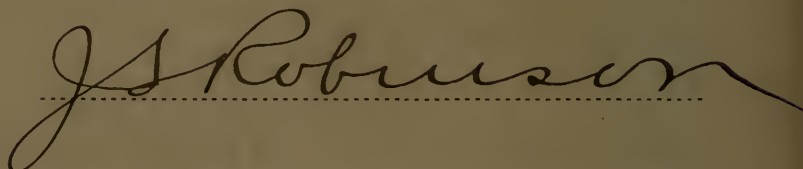
reached in this case and that an opportunity should be given to correct it.

Respectfully submitted,

IRA BRONSON,
J. S. ROBINSON,
Proctors for Appellee.

STATE OF WASHINGTON: }
COUNTY OF KING, } ss.

J. S. ROBINSON, being first duly sworn, deposes and says: That he is one of the proctors in the above entitled action; that in his belief the foregoing Petition is meritorious and well founded and that it is not interposed for delay.



Subscribed and sworn to before me this 31st day of January, 1914.



NOTARY PUBLIC in and for the State of Washington, residing at Seattle.